The Sponsoring State’s Due Diligence Obligation

A FRAMEWORK FOR IMPLEMENTATION

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Sponsoring State’s Obligation

States Parties shall have the *responsibility to ensure that* activities in the Area ... carried out by ... natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, *shall be carried out in conformity with this Part.*

Article 139(1) UNCLOS
Sponsoring State’s Obligation

The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3.

*States Parties shall assist the Authority by taking all measures necessary to ensure such compliance* in accordance with article 139.

Article 153(4) UNCLOS
Sponsoring State’s Obligation

The Sponsoring State ... shall ... have the

*responsibility to ensure*, within their legal systems,

*that a contractor so sponsored*

*shall carry out activities in the Area in conformity with*

*the terms of its contract and its obligations under the Convention.*

Article 4(4) Annex III UNCLOS
A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.

Article 4(4) Annex III UNCLOS
Sponsoring State’s Obligation

The obligation to

*ensure compliance by sponsored contractors*

with the terms of the contract

and the obligations set out in the Convention

and related instruments

Seabed Disputes Chamber at [3.A] p 74
Obligation of Due Diligence

The sponsoring State’s obligation “to ensure” is not an obligation to achieve, in each and every case, the result that the sponsored contractor complies with the aforementioned obligations. Rather, it is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost to obtain this result. [...] this obligation may be characterized as an obligation “of conduct” and not “of result”, and as an obligation of “due diligence”.
Obligation of Due Diligence

- **High standard**
  - “best possible efforts” “the utmost” “all necessary measures”

- **Pro-active obligation**
  - laws/regulations + monitoring + enforcement

- **Ongoing review**
  - changes with technology + increases with risk

- **Applies equally to developing States**
Elements of Due Diligence

- Precautionary Approach
- “Best Environmental Practices”
- Environmental Impact Assessment
- Technical and Financial Guarantees
- Recourse for Compensation
Necessary and Appropriate Measures

- Enforceable laws/regulations + administrative measures
- Reasonable
- No less stringent than ISBA

Examples
- financial viability/technical capacity of sponsored contractors
- conditions for granting sponsorship
- penalties for non-compliance
Institutional

Regulatory

Administrative

Financial
Decision to Sponsor

Conditions of Sponsorship

Monitoring and Reporting

Enforcement
Decision to Sponsor

Conditions of Sponsorship

Monitoring and Reporting

Enforcement
Decision to Sponsor

- **Institutional**
  who will be the decision maker?

- **Regulatory**
  information requirements + decision-making principles

- **Administrative**
  application requirements + timeframes + procedure

- **Financial**
  user pays funding?
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